

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 234,
Complainant,

and

CLAY COUNTY,
Respondent.

CASE NO. 7007

PUBLIC EMPLOYMENT
RELATIONS BOARD

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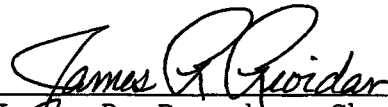
AMENDED ORDER

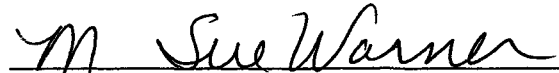
The order appearing at pp. 21-22 of our April 13, 2007, Decision on Appeal in this matter is hereby amended by striking the order's second full paragraph and by inserting in its place the following:

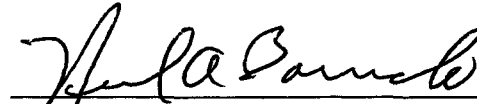
This decision constitutes PERB's final agency action on the issue of whether a prohibited practice was committed by the County. PERB retains jurisdiction to resolve any disputes which may arise concerning the implementation of the remedy ordered. In order to minimize further delay, PERB will schedule a hearing to be held within 60 days of the date below to receive evidence on any aspects of the ordered remedy's implementation upon which the parties have not reached agreement. Agency action on this aspect of the case will not be final until PERB is notified by the parties that no dispute concerning any aspect of the ordered remedy's implementation exists, or until any such disputes are resolved by the Board.

DATED at Des Moines, Iowa, this 7th day of May, 2007.

PUBLIC EMPLOYMENT RELATIONS BOARD


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INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 234,
Complainant,
and
CLAY COUNTY,
Respondent

This case is before the Public Employment Relations Board (PERB or Board) on appeal from a Proposed Decision and Order of an administrative law judge (ALJ) in a prohibited practice proceeding filed by the International Union of Operating Engineers, Local 234 (Union) pursuant to Iowa Code section 20 11. In its complaint, the Union alleges that Clay County committed prohibited practices within the meaning of Iowa Code sections 20 10(2)(a), (c) and (d) when it terminated the employment of James Sikora due to his exercise of rights granted by the Public Employment Relations Act, Iowa Code chapter 20. Following an evidentiary hearing, the ALJ determined that the County had committed a prohibited practice and ordered the reinstatement of Sikora with full back pay and benefits, less interim earnings. The County appealed the ALJ's proposed decision to the Board. Oral arguments were presented to the Board by MacDonald Smith for the Union and James Swanger for the County. Both parties filed briefs on appeal.

Pursuant to Iowa Code section 17A.15(3), on this appeal we possess all powers which we would have possessed had we elected, pursuant to PERB rule 621-2 1, to preside at the evidentiary hearing in place of the ALJ. Based upon the record before the ALJ, and having considered the parties' arguments, we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Union is the certified bargaining representative of a bargaining unit consisting of certain Clay County Secondary Roads Department employees, which formerly included James Sikora. Sikora worked full time as an equipment operator for the road department from 1984 until his discharge from employment on October 29, 2004. Prior to his discharge, Sikora was never disciplined for any reason during his 20 years of employment with the County. At the time of his discharge, foreman John Rosacker was Sikora's immediate supervisor and the county engineer was Scott Rinehart.

In addition to his primary employment with the County, commencing in 1993 Sikora worked part-time for the Clay County Fair Association (Fair Board), a private, non-profit corporation,¹

¹ At oral arguments on appeal, we informed the parties that we would treat the County's attachment of a document to its brief on appeal as a motion to reopen the record to include the document. We hereby grant the County's motion to reopen the record to include the document, entitled "Restated Articles of Incorporation of Clay County Fair Association, Inc." which establishes that the Fair Association, of which the Fair Board is a part, is a private, non-profit corporation organized pursuant to Iowa Code chapter 504A.

maintaining gravel streets and the race track area at the fairgrounds, using road graders, payloaders and trucks either loaned or rented to the Fair Board by the County. Sikora worked for the Fair Board from roughly April to October during hours after his workday with the County, on his days off or on vacation days from his County employment, and would take a week of vacation to work for the Fair Board during the fair itself. Several other road department employees, including Rob Kluender, and two employees with other primary employment also worked part-time for the Fair Board. In 2003 Sikora and Kluender were making between \$6.00 and \$7.50 per hour for this part-time employment.

Prior to the fall of 2003, Ike Albrecht, apparently also a County employee who did part-time work for the Fair Board, acted as a County spokesperson for purposes of dealing with fair manager Phil Hurst when Hurst needed to discuss matters concerning the use of County equipment for work at the fairgrounds. Albrecht resigned from his Fair Board employment sometime in 2003.

In the fall of 2003, Sikora began keeping track of the hours of all of the part-time employees on the Fair Board crew for submission to fair manager Hurst. When the fair was over in the fall of 2003, Sikora and Kluender went to Hurst's office to request a raise for the crew. They told Hurst they believed the crew was doing a good job at the fairgrounds and should be compensated more. Hurst said he would think about it and get back

to them. Having heard nothing from Hurst on the subject by the following spring, Sikora went alone to Hurst's office in April, 2004 and again in May or June, 2004, to ask about the status of the raise issue. Hurst said that the budget was tight, that he hadn't made a decision yet, and that he would think about it and get back to Sikora.

On July 1, 2004, county engineer Scott Rinehart began his employment with the County. Less than three weeks later, Sikora and two other road department employees met with representatives of the County's board of supervisors and lodged complaints about actions of Rosacker (their immediate supervisor) and other employment-related matters. The board representatives indicated they would look into the matters, discuss them with Rinehart, and meet again with the employees in September, 2004. No such follow-up meeting took place.

On or about July 15, 2004, the Union filed with PERB a petition for a representation election and the Union's certification as collective bargaining representative for a bargaining unit of the County's road department employees. PERB notified the County of the filing of the petition and the County, through Rinehart, acknowledged the filing of the petition.

Prior to this time, when more gravel was needed on the streets at the fairgrounds, Sikora would ask to use the County's gravel trucks and would haul the gravel himself on Fridays, as

part of his part-time work for the Fair Board. In July, 2004, Sikora was told by his County superiors that when more gravel was needed at the fairgrounds Hurst should contact Rinehart's office to arrange for the County to haul the gravel during the County's workday. Sikora relayed this information to Hurst.

At the end of July, 2004 (possibly at the meeting where use of the gravel trucks was discussed) Sikora met with Hurst at Hurst's office to turn in time records for himself and Kluender for hours they had worked at the fairgrounds. Sikora asked Hurst if he had decided about raises and Hurst said he had not. Sikora told Hurst he felt he and the crew were deserving of a raise, and that he, personally, didn't feel he could continue working for the Fair Board at his low rate of pay. He told Hurst he made approximately \$16.00 per hour working for the County. Hurst told him he couldn't pay that much, but asked if \$12.50 for Sikora and \$10.50 for Kluender would be enough to keep them working there. Sikora said that would be fine. They also agreed upon a \$1.00 per hour raise for the other crew members. Thereafter, the increased wages were put into effect and Sikora and his crew continued to work at the increased rates for the rest of the summer and into the fall, including during the fair.

On or about August 2, 2004, PERB directed a representation election among the road department employees of the County. The election was conducted by mail between August 26 and September 9,

2004. As a result of the election, PERB certified the Union as the collective bargaining representative for the employees in the road department bargaining unit

In late July or early August, 2004, Hurst contacted the county engineer's office to discuss the use of gravel trucks, as Sikora had relayed to him that he should Rosacker came to see Hurst and told him, as Sikora had previously, that he should not go through Sikora to request gravel trucks, but should contact the county engineer's office directly with such requests During this conversation, Hurst told Rosacker that he "had been led to believe" that Rinehart was conditioning Hurst's continued use of County equipment on Hurst's payment of wages to Sikora and other Fair Board crew members that were comparable to wages being paid by the County Rosacker apparently relayed this discussion to Rinehart, who came to the fairgrounds later that same day and told Hurst that Hurst's belief "absolutely was not true." Rinehart told Hurst that "there is probably some disciplinary action that needed to be taken there" and asked him to "write that down in a written memo to me " Hurst said he would do that but he was too busy to do so until after the fair.

After the 2004 fair, Sikora reported to Hurst the hours he and the crew had worked for the fair. In late September or early October, 2004, Sikora went to Hurst's office to see if paychecks were ready. Hurst was upset and said he felt Sikora had misled

him, that he was upset about the wages he had agreed to, and that he felt Ike Albright had been squeezed out of his position. Sikora had no further conversations with Hurst prior to his discharge.

Also in late September or early October, 2004, Rinehart called Hurst and said that he would like to "look into" what Hurst said had happened, and that Hurst needed to get something written down "so we can have something happen here " According to Hurst's testimony, Rinehart asked him if he would go to the county attorney's office to make a written statement Rinehart testified that Hurst had said that he would get something written down but "wanted to do it . . . with the county attorney " In any event, it was Rinehart who called the county attorney's office about the matter, and assistant county attorney Michael Houchins called Hurst requesting that he come to Houchins' office on October 20, 2004.

Following the meeting between Houchins and Hurst, Houchins sent Rinehart the following letter, dated October 27, 2004

Re: Interview With Phil Hurst on 10-20-2004,
concerning Jim Sikora

Dear Scott:

On Wednesday, October 20, 2004, Phil Hurst came to my office to discuss Jim Sikora's work at the 2004 Clay County Fair. Phil stated that he had previously had Ike Albrecht do the infield work at the Clay County Fair. Ike was paid \$8 25 an hour Sometime last year, Ike came in to visit with Phil and stated that he felt pressure to step down. Ike stated the young guys were putting on pressure for him to step down because he was

old enough, that he had enough money, and did not need the money. He told Phil that he was told by young guys that he should move on.

A couple of weeks later, Ike came back to visit with Phil and stated that he would not be able to stay on. He stated that the "the younger guys want to take over." Phil then indicated that Ike did come back later and stated he did want to work at the fair doing other duties

Soon after Ike stated that he would not be coming back, Sikora came to visit with Phil Hurst. At that time, Phil did not know you and had not visited with you about using the County equipment at the fair. Sikora then stated to Phil Hurst that because of the expense of the equipment, approximately \$100,000 worth of equipment, that the new County Engineer stated that Sikora could not be operating the equipment unless working at the same salary that he was receiving while working for the County. Sikora emphasized to Phil that they needed more money to work. He indicated that the only way they could work and use the County equipment was if they were paid more. It was then agreed that Jim Sikora would receive \$12.50 an hour, and Rob Kluender would also receive a raise. Phil was led to believe that he had to pay the \$12.50 per hour to Sikora, or the Clay County Fair would not be able to use County equipment.

Phil indicated that some time before the fair, you had a conversation with him. You told him that he should contact Brad or John [Rosacker] with regard to implementing things involving the Clay County equipment. Phil said that Sikora had led him to believe that Sikora was the one he should go through in order to discuss the use of County equipment.

Phil also indicated that he was disappointed in the amount of hours that Sikora and Kluender turned in. He indicated they each turned in 199 hours for working at the Clay County Fair. He indicated that one of those days he was charged for 19 hours for time when it was raining most of the day. Phil discovered that Sikora had charged for time that he was sitting in the shed waiting for the rain to stop.

Phil indicated that he has discussed his concerns about this with Sikora. Likely, Sikora will not be allowed to work at the fair next year.

If you have any other questions or concerns about this conversation, please feel free to call.

On October 29, 2004, Sikora was working at the county maintenance shop when Rinehart called him into his office and, in the presence of Rosacker, handed Sikora the October 27 letter Houchins had written and asked him to read it. Sikora did so, and Rinehart asked him what he thought of it. Sikora replied that it was mostly untrue. Rinehart then handed Sikora his paycheck, told him he was paid up and that he was done working for the Clay County Secondary Roads Department. Sikora was shocked, and said that he couldn't believe he was being fired after 20 years of service over something Rinehart had not even asked him about or discussed with him. He asked Rinehart to tell him what the problem was, and Rinehart pointed to the paragraph in the letter dealing with Sikora's alleged statements to Hurst about the county engineer having stated that Sikora could not be operating the equipment unless working at the same salary he was receiving while working for the County. Sikora told Rinehart it was not true at all and asked if there was anything he could do to clear this up, but Rinehart had no comment.

About a week after Sikora's termination Rinehart prepared the following notes about the termination meeting:

Memo concerning the dismissal of Jim Sikora

At approximately 2:30 pm Friday, October 29, 2004 I Scott Rinehart met with John Rosacker and Jim Sikora at the east end of the shop building (break area). The purpose of the meeting was to inform Jim Sikora he was dismissed from employment with the Clay County Secondary Road Department

I gave Jim Sikora a copy of Phil Hurst's statement given to Mike Houchins on October 20, 2004

Jim read the statement and had little reaction. I then handed Jim his paycheck and said he was done working for the Clay County Secondary Roads Department.

Jim's first reaction was to say "Come on Scott I've been here 20 years, I need this job. I live paycheck to paycheck like most people. Isn't there something I can do?" He asked me if this statement was the only reason for his dismissal. He thought he had given 20 good years.

I did not comment.

He did not deny the statement of Phil Hurst's other than to say Ike wasn't mad at him and that he wouldn't say anything to Phil that would get me into trouble Jim stated that he wanted a raise for the level of responsibilities he had at the Clay County Fair and that in the end, he let Phil decide what would be fair.

The conversation continued for perhaps 45 minutes. Most of the conversation was one sided with Jim reiterating his 20 year of service. I told him I wasn't going to say anything about his service with the County

The instant prohibited practice complaint was filed on November 29, 2004 Only Sikora, Hurst and Rinehart testified at the April 8, 2005 evidentiary hearing on the complaint. Hurst testified that Houchins' letter was incorrect in stating Sikora had referred to working at the "same" salary paid by the County,

and that Sikora had instead referred to the need to be working at a "comparable" salary. When asked if the letter otherwise correctly characterized Sikora's statements to him, Hurst testified.

As I remember it at that time, what he stated was that he had talked with the county, the new county engineer about the equipment. He had also talked to an engineer by the name of Mr. Thiese and I never did quite get the relationship with that. . . . And when, in that conversation he said that the county engineer was unhappy because he was working at lower salary--much lower salary for the Fair than he was working for the engineer for and he felt that they should be, if he was going to work with that, with their expensive equipment, he should be getting a comparable salary at the Fair with what he was getting at the county.

Hurst also testified that Sikora's alleged statements in this regard (i.e., about County equipment and comparable salaries) had been made not at his meeting with Sikora in July, 2004, at which crew wages were agreed upon, but much earlier, at the first meeting he had with Sikora and Kluender to discuss wages after the fair in 2003. Hurst also testified that this 2003 meeting occurred "after the new county engineer had been put in place "

Sikora testified that the only parts of Houchins' letter that were true were the parts indicating he had discussions with Hurst requesting raises for the crew. Sikora testified that he did not tell Hurst the county engineer would not let him operate the equipment unless he was paid the County wage and that he never led

Hurst to believe that he was the contact or one having control over the use of County equipment.

Regarding this conflict between Sikora and Hurst's version of events, we find Sikora's testimony more credible and find that Sikora did not make the coercive statements Hurst attributed to him as set out in Houchins' letter. We also find Sikora's testimony that he denied the allegation against him at the termination meeting with Rinehart to be more credible than Rinehart's assertion that Sikora did not deny the allegations.

Sikora's testimony was more credible because he has given a consistent, detailed, and logical account of the progression of events. We think it extremely unlikely that he would make an untruthful statement to Hurst which could be so easily "found out" should Hurst have decided to call or meet with Rinehart to verify it. On the other hand, Hurst's allegations lack credibility because Hurst's versions about what Sikora supposedly said--a matter of obvious and critical importance in this case--are inconsistent and obviously confused.

Hurst's statement to Houchins indicates Sikora told him the new county engineer said that Sikora "could not" be operating the equipment unless working at the "same salary" he received at the County, and gave the impression this conversation occurred at the same July, 2004 meeting at which Sikora and Hurst agreed upon the amounts of wage increases. At hearing, Hurst did not verify the

accuracy of the Houchins' letter when asked to do so. Rather, Hurst testified that Sikora had referred to the need to have a "comparable" salary and not the "same" salary. Hurst also characterized the statements Sikora had allegedly made to him differently than they had been characterized in Houchins' letter, testifying that Sikora had indicated that the county engineer was "unhappy" because he was working for a lower salary and the engineer felt that, if they were going to be working with the County's expensive equipment, he "should be getting a comparable salary " Contrary to the thrust of his statement to Houchins, Hurst testified that this conversation occurred at one of his first wage negotiation sessions with Sikora, when Kluender was also present, in the fall of 2003. Hurst also testified the conversation occurred "after the new county engineer had been put in place " But it appears from the record that Rinehart didn't begin his employment as county engineer until July, 2004. Nowhere in the record is there any evidence of what, if anything, Sikora supposedly said to Hurst which had "led him to believe" that Sikora was the one he should go through in order to discuss the use of County equipment.

While we do not discount Hurst's credibility because of any demonstrated motivation to intentionally misstate the facts, we think it likely that he had a mistaken impression of Sikora's authority to begin with (perhaps because Sikora assumed a position

of leadership of the crew upon Albrecht's departure and because Sikora had been bringing gravel trucks to the fairgrounds) which caused him to misapprehend comments made by Sikora in the course of negotiating wage increases.² Given Hurst's inconsistent versions of Sikora's alleged remarks and his confusing testimony about statements Sikora supposedly attributed to county engineer Rinehart at a time in 2003 when Rinehart had not even yet become the county engineer, we do not find either the version of events contained in Houchins' letter or the versions testified to by Hurst to be reliable or credible.

We also view Rinehart's claim that Sikora did not deny the allegations against him at the termination meeting as less credible than Sikora's testimony. The timing of Rinehart's conversation with Hurst, which occurred shortly after Sikora and others complained to the board of supervisors about Rosacker and other employment-related matters, together with Rinehart's failure to even minimally investigate Hurst's allegations, combine to cast doubt on his credibility.

² If, for example, Sikora had stated something to the effect that the new county engineer might not be happy to have the County's expensive equipment being operated by workers being paid far less than the County paid and that the crew should be paid the same as the County paid, this statement would not have been a threat. However, coupled with Hurst's mistaken impression about Sikora's authority over use of County equipment, Hurst could have formulated the belief that the Fair Board wouldn't be able to continue to use County equipment unless the same wages were paid. The point is that the words used by Sikora are critical to determining his meaning, and Hurst is inconsistent about what those words were.

As noted, with this type of allegation, determining what words Sikora allegedly used with Hurst was of critical importance; but rather than further questioning Hurst about precisely what Sikora had said and determining whether there were any other witnesses present who might provide relevant information, Rinehart instead immediately talked to Hurst about the possibility of disciplining Sikora. He never talked to Sikora--a 20-year employee with a spotless disciplinary record--to get his side of the story, but instead took the word of someone he had just met about a conversation that may have taken place months earlier and seems to have focused only on getting a written statement from Hurst so that he could use it as a basis for discipline. After arranging for Houchins to call Hurst in for a meeting and obtaining Houchins' letter, Rinehart did not "look into" the matter further, as he had told Hurst he was going to do--he simply met with Sikora for the purpose of terminating his employment.

From the beginning, Rinehart seems to have been less intent on learning the facts than on establishing a basis for disciplining Sikora, focusing his efforts only on insuring that Hurst's statement was reduced to writing by the county attorney. Such conduct causes us to seriously question Rinehart's motivation and to conclude that his testimony, insofar as it conflicts with Sikora's, is not credible. We have accordingly credited Sikora's testimony in making the foregoing findings of fact.

Following hearing, the ALJ determined that the County had engaged in prohibited practices and proposed that Sikora be reinstated with back pay and benefits. The County appealed the ALJ's proposed decision and order to the full Board.

CONCLUSIONS OF LAW

We concur with the ALJ's conclusion that the County committed a prohibited practice and that reinstatement with back pay and benefits is appropriate, but base our conclusion on different reasoning.

In its complaint, the Union alleged the County violated Iowa Code sections 20.10(2)(a), (c) and (d) by terminating Sikora for engaging in protected concerted activities. Those sections provide:

2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

* * *

c. Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.

Central to the Union's claim is Iowa Code section 20.8, which provides, in part:

20.8 Public employee rights.

Public employees shall have the right to.

* * *

3 Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

The County terminated Sikora's employment for statements he allegedly made in the course of negotiating wage increases for himself and fellow employees with his secondary employer, the Fair Board. Thus, it is necessary to determine whether those wage negotiations constituted protected concerted activity in order to determine whether Sikora's firing was prohibited by Iowa Code section 20.10(2)(a).³

There is no question that Sikora's wage negotiations on behalf of himself and other crew members constituted "concerted" activity for "the purpose of collective bargaining or other mutual aid or protection." See *Davenport Education Association*, 84 PERB 2490; *Indian Hills Community College*, 03 PERB 6414. However, the County argues that Sikora's concerted activity was not "protected" in this case because (1) the activity was directed at his

³ We think it inappropriate to apply the "Wright Line" analysis discussed by the ALJ because here the County discharged Sikora for alleged misconduct in the course of engaging in concerted activity, not for some other conduct "unrelated to" such activity. See, *Cerro Gordo County v PERB*, 395 N W 2d 672, 676 (Iowa App 1986).

secondary employer, the private non-profit Fair Board, and not his primary public employer, Clay County, or (2) Sikora's untruthful statements amounted to unprotected misconduct for which he could legitimately be fired.

We do not agree with the County's argument that a public employer is free to fire employees for engaging in otherwise-protected concerted activities for mutual aid and protection at other places of employment.

No dispute exists that Sikora was a public employee within the meaning of chapter 20 due to his employment with his primary employer, the County. As such, he possesses the rights set out in Iowa Code section 20.8, by its express terms. The Union claims those rights were violated by the County, not the Fair Board. Iowa Code section 20.8(3) is written in broad terms and does not limit public employees' rights to engage in concerted activities to activities directed at the primary public employer or even at other public, as opposed to private, employers. We think the section's broad language furthers sound public policy, since allowing public employers to fire employees for engaging in concerted activities at other places of employment, whether public or private, could certainly have a chilling effect on public employees (i.e., interfere with, restrain or coerce them) in the exercise of their rights vis-à-vis their primary public employer. The application of section 20.8 rights to concerted activities

directed at another employer is also consistent with federal precedent. See, e g., *General Electric and IUOE*, 169 NLRB 1101, 67 LRRM 1326 (1968), *enf'd*, 411 F.2d 750 (9th Cir. 1969).

Otherwise-protected activity may lose its protected status if an employee engages in certain types of serious misconduct in the course of engaging in the activity. See *Humboldt County Memorial Hospital*, 86 H O 3094. As noted, however, we view the record as establishing that Sikora did not make the statements attributed to him and thus that he did not engage in misconduct which stripped his negotiations activities of the protection of the statute

When an employer discharges an employee for misconduct in the course of what would otherwise be protected activity, the employer has the burden of establishing that it held a "good faith" or "honest" belief that the employee was engaged in serious misconduct. Once the employer establishes that it acted based upon such belief, the burden shifts to the complainant to establish that the misconduct did not in fact occur *NLRB v. Burnup & Sims*, 379 U.S 21, 57 LRRM 2385 (1964); *Webco Industries, Inc* , 217 F.3d 1306, 164 LRRM 2845 (10th Cir. 2000); *Accurate Tool Mfg., Inc.*, 335 NLRB 1096, 173 LRRM 1107 (2001); *Pepsi-Cola Co* , 330 NLRB 474, 164 LRRM 1013 (2000)

In order to meet its burden of establishing that Rinehart held a "good faith" or "honest" belief that Sikora was engaged in serious misconduct, we think the County must necessarily establish

that Rinehart's belief was reasonable. We do not think that Rinehart's reliance on Hurst's information was reasonable under these circumstances. As noted, due to a variety of factors, Hurst could easily have misunderstood what Sikora said in a conversation that, according to Hurst, took place many months previously. But Rinehart didn't even question Hurst about such basic facts as exactly what Sikora had said, when the conversation had occurred, and whether others were present at the time. Nor did Rinehart ever give Sikora a meaningful opportunity to give his side of the story or to explain or refute the allegations,⁴ which seems to us to be what a reasonable supervisor would do if truly trying to determine the facts.

Instead of conducting even a minimal investigation, Rinehart took the word of someone he had just met about a conversation that was months old and immediately raised the idea of using it as a basis to discipline a long-term employee with a spotless disciplinary record. From the beginning, Rinehart seemed less intent on learning the facts than on establishing a basis for disciplining Sikora, focusing his efforts only on ensuring that Hurst's statement was reduced to writing by the county attorney.

⁴ By the time Rinehart met with Sikora on October 29, 2004, his decision to terminate Sikora had been made. As his memo about the meeting reflects, the very purpose of the meeting "was to inform Jim Sikora he was dismissed from employment", and Sikora's final check had been prepared and was in Rinehart's hands for delivery when the meeting commenced.

We conclude that Rinehart had no reasonable basis upon which he could formulate a "good faith" or "honest" belief that Sikora was guilty of misconduct.

But even if we concluded, which we do not, that the County established that Rinehart had a "good faith" or "honest" belief that misconduct had occurred, we would conclude that the Union met its burden of establishing that the misconduct did not in fact occur, for we have found that Sikora did not make the statements Hurst attributed to him. We thus need not reach the issue of whether the alleged statements, had they been made, would have constituted the type of serious misconduct as would forfeit the statute's protection.

We think it apparent that Rinehart's unreasonable conduct, discussed above, demonstrated a reckless disregard for whether Sikora's discharge was in violation of the statute, and was thus willful within the meaning of Iowa Code section 20.10. We thus conclude the County committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(a) by discharging Sikora. Having so concluded, we need not decide whether other statutory provisions were also violated by the discharge.

Based on the foregoing, we issue the following:

ORDER

As a remedy for the prohibited practice found, the County shall reinstate James Sikora to his former position with back pay

less interim earnings, restore his benefit accounts to reflect accumulations he would have received but for his termination, make appropriate adjustments to his personnel files and take any other actions necessary to restore his employment status to what it would have been had he not been illegally terminated. The County shall also post the attached notice and comply with its provisions, and shall cease and desist from further violations of the public employment relations act.

The Public Employment Relations Board retains jurisdiction of this matter in order to specify the precise terms of the remedy, and, in order to prevent further delay in the resolution of this matter, will promptly schedule a hearing within 60 days of the date below to receive evidence on the precise remedy should the parties fail to reach agreement thereon. Agency action will not be final until the appropriate remedy is approved or determined by the Board. The Board retains jurisdiction to enter whatever orders may be necessary or appropriate to address any remedy-related matters which may hereafter arise.

DATED at Des Moines, Iowa, this 13th day of April, 2007

PUBLIC EMPLOYMENT RELATIONS BOARD


James R. Riordan, Chair

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Neil A Barrick, Board Member

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NOTICE OF FINDING OF PROHIBITED PRACTICE

ISSUED PURSUANT TO A DECISION OF THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

The Iowa Public Employment Relations Board (PERB) has determined that Clay County, a public employer, committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(a). That section provides:

20.10 Prohibited practices.

* * *

2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to.

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter

PERB has ruled that the prohibited practice occurred in the fall of 2004 when the County discharged James Sikora for statements he allegedly made in the course of negotiating wage increases for himself and others working part-time for the Clay County Fair Association. PERB ruled that no misconduct occurred and that the County's discharge of Sikora constituted interference with Sikora's right to engage in concerted activities for mutual aid or protection.

To remedy the prohibited practice, the County has been ordered to

- Cease and desist from further violations of Iowa Code chapter 20;
- Reinstate Sikora with back pay and benefits, minus interim earnings,
- Post this notice in a prominent place in its main office accessible to the general public and in conspicuous places customarily used for the posting of information to employees in the affected bargaining unit, for a period of not less than 30 days.

Any questions concerning this Notice or Clay County's compliance with its provisions may be directed to the Public Employment Relations Board at 515/281-4414.

Issued April 13, 2007

PUBLIC EMPLOYMENT RELATIONS BOARD
510 EAST 12TH STREET, SUITE 1B
DES MOINES IA 50319